

THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NORTH CAROLINA

FILED

DEC 06 2012

JULIE A. RICHARDS, CLERK
US DISTRICT COURT, EDNC
BY JS DEP CLK

Eddie Ray: Kahn,
Petitioner

Crim. Case No. 1:08-cr-271

v.

Case No. 5:12-HC-2149-FL

Jonathan C. Miner, Warden
Respondent

NOTICE OF Eddie Ray: Kahn's NON ACCEPTANCE OF JUDGE LOUISE
FLANAGAN'S ORDER TO DISMISS CASE NO. 5:12-HC-2149-FL

Eddie Ray: Kahn, Petitioner in Case No. 5:12-HC-2149-FL,
hereby Notices Judge Louise Flanagan and this Court that her
purported "Order" to dismiss the aforementioned case is
refused for the following reasons:

1. I sent a NOTICE AND DEMAND TO CHIEF JUDGE JAMES C.
DEVER, III FOR VERIFICATION OF JUDGE LOUISE FLANAGAN'S ARTICLE
III STATUS to this Court. It was placed on the Docket Record
on September 4, 2012. The reason for the demand was this: I
do not believe her office was created by Section 8 of the
Judiciary Act of 1789. If it was not, she would not have any
lawful authority to hear a common law Writ of Habeas Corpus
Ad Subjiciendum Action. I asked for a copy of her Appointment
Affidavit because it will identify which branch of the
government she works for. I believe it is the Executive
branch.

If this is the case, I need for Judge Dever (assuming his
office was ordained and established by Section 8 of the
Judiciary Act of 1789) to assign a judge whose office was
established by Section 8 to hear this Action, as he/she would
have Congressional authority pursuant to Section 14 of that
Act to hear a common law Action.

2. It has been over 2 months since that demand was docketed. I still have not received Judge Flanagan's Appointment Affidavit. However, Judge Flanagan is continuing to act as though she has some Congressional authority to dismiss my Writ, even though I have challenged her jurisdiction.

This is a jurisdictional challenge. There are many Supreme Court cases that state that federal courts are courts of limited jurisdiction. Therefore, once jurisdiction has been challenged, the proceedings must cease until the jurisdiction is proven. "There is no discretion to ignore that lack of jurisdiction". Joyce v. US, 474 F. 2d 215. "The law provides that once State and Federal jurisdiction has been challenged, it must be proven." Main v. Thiboutot, 100 S.Ct. 2502 (1980). "Once jurisdiction is challenged, it must be proven." Hagens v. Lavine, 415 U.S. 533. "When a judge knows that he lacks jurisdiction, or acts in the face of clearly valid Constitutional provisions of valid statutes expressly depriving him of jurisdiction or judicial capacity, judicial immunity is lost". Rankin v. Howard, 633 F. 2d 844 (1980), Den zeller v. Rankin, 101 S.Ct. 2020 (1981) (underlining added).

3. I will allow Judge Flanagan to prove her jurisdiction in either of 2 ways.

a. Give me a copy of her Appointment Affidavit, or

b. Give me a notarized affidavit stating that her office was ordained and established by Section 8 of the Judiciary Act of 1789.

Note: Since Judge Dever and "Staff Counsel II" are now involved in this jurisdictional challenge, I want to verify that their offices were also ordained and established pursuant to Section 8 and Section 35, respectively, of the Judiciary Act of 1789, as well.

4. To be truthful, I do not understand why there has been such a delay in the Court sending me the requested document. These documents are Public Record. They can be obtained by submitting a Freedom of Information Act request to the Department of Justice. In the past, I have received, from the DOJ, copies of the Appointment Affidavits of a number of federal judges, as well as U.S. Attorneys.

I have asked this Court to furnish me with these documents only because it takes sometimes 2-3 months to receive the documents from the DOJ. This Court can give me these documents in 2-3 days.

5. As I stated in my Writ, I am very aware that there are at least 2 different federal court systems in America today. We have courts that were created pursuant to Article III of the Constitution of the United States of America (CUSA). Also, There are courts that have been created pursuant to Article I of the CUSA. The Article III courts can hear a common law Action. An Article I court cannot.

The Judge's office that can hear a common law Action was created by Section 8 of the Judiciary Act of 1789. Note: I do not know if there was ever an Act of Congress that created the judge's office for the Article I courts, which are strictly administrative in nature.

6. And, lastly, there seems to be a commercial court system. Example: When the "U.S. District Court for the Eastern District of North Carolina in Raleigh, North Carolina" is put into the search mode in the Dun & Bradstreet website, what comes up is: Supreme Court, United States of The: with the address of 310 New Bern Avenue, Raleigh North Carolina. This commercial entity has a DUNS number of 144828550.

According to what I am seeing at the Dun & Bradstreet website, this court is in the commerical court system.

7. Conclusion: I paid the filing fee and the Court accepted it, thereby entering into a contract to provide services to me. The Court appointed Judge Flanagan to provide those services. She has refused to provide the service, which is simply to issue the Writ, which is a ministerial function. Both Judge Flanagan and the Court, which is operating as a business, as evidenced by it's listing in Dun & Bradstreet, have violated the contract and have harmed me greatly because of my continued false imprisonment as a direct result of Judge Flanagan's refusal or inability to issue the common law Writ.

The U.S. Supreme Court in Federal Crop Ins. Corp. v. Merrill, 332 US 380, made it very clear that "Anyone entering into an arrangement with the government takes the risk of having accurately ascertained that he who purports to act for the government stays within the bounds of his authority, even though the agent himself may be unaware of the limitations upon his authority".

In this decision, the Court stated that, if you do not challenge the agent's jurisdiction early on, the "De Facto officer" doctrine applies. Note: I do not consent to have this Action adjudicated by a "de facto" judge. I demand the documents that I have asked for be furnished to me without delay.

Failure to produce the documents will be the Court's tacit admission that Judge Flanagan is a de facto judge incapable of adjudicating a common law Action.

If that is the case, and there is no Act of Congress that has authorized this Court and the judges therein to adjudicate a common law Action, please refund the filing fee to me. If I have not received the filing fee within ten (10) days from the date this Notice is received by this Court, that will be the Court's tacit admission that the service that I paid for will be performed or that the money was taken under false pretenses and that I have been defrauded out of my money.

Note: If Judge Flanagan only has the lawful authority to deal with U.S. Code and cannot adjudicate a common law Action, please send me a certified document to that effect.

However, if this Court can adjudicate a common law Action and is just refusing to do so, please state that fact in the aforementioned certified document, as well.

Respectfully submitted,



Eddie Ray: Kahn

P.O. Box 630

Winton, North Carolina

CERTIFICATE OF SERVICE

I certify that on December 4, 2012, I placed the NOTICE OF Eddie Ray: Kahn's NON ACCEPTANCE OF JUDGE LOUISE FLANAGAN'S ORDER TO DISMISS CASE NO. 5:12-HC-2149-FL in the Inmate Mail Box at Rivers Correctional Institution in Winton, North Carolina addressed to the Warden, currently Mr. Brick Tripp.



Eddie Ray: Kahn

P.O. Box 630

Winton, North Carolina 27986